



Archdiocese of New York

INSTRUCTIONAL TELEVISION

215 Seminary Avenue
Yonkers, NY 10704

Ms. Marlene S. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WT Docket No. 03-66

Dear Ms. Dortch:

This letter is submitted on behalf of the Department of Education, Archdiocese of New York ("Archdiocese") in connection with the above-referenced proceeding.

Archdiocese herein replies to certain of the arguments made by Grand MMDS Alliance New York F/P Partnership ("Grand Alliance") in its opening comments dated September 8, 2003.

BACKGROUND

Grand Alliance makes several arguments in its Comments, only one of which Archdiocese need address in detail here. In particular, Grand Alliance contends that "[c]o-channel ITFS licensees or their lessees should not be accorded any new rights to additional protection (including any new receive sites), or, as suggested by the Coalition, have the technical (or other) restrictions on their on their grand fathered operations lifted." *Id.* at 9. Grand Alliance goes on to argue that "any other conclusion would be inconsistent with the Commission's stated intent in the original orders . . . 'freezing' incumbent ITFS operations on [E and F] channels . . .," and would "divest such MMDS licensees of their reasonable investment-backed expectations." *Id.* at 9-10.

DISCUSSION

There is no merit to the Grand Alliance argument. It effectively ignores the determination made by the Commission five years ago extending protected service areas ("PSAs") to all ITFS licensees - - including E and F Group licensees - - in addition to the receive site protection they had previously enjoyed. See Report and Order in MM Docket No. 97-217, 13 FCC Rcd (19,112, 19,173) (1998) at para. 114. That determination is embodied in Rule 74.903(d) which prescribes, in pertinent part, that ITFS licensees "must be protected from harmful electrical interference at each of [their] receive sites registered previously as of September 17, 1998, and within a protected

service area.” This determination has long since become final. Grand Alliance’s argument to the contrary amounts to an untimely collateral attack on the Rule, and should be rejected.

Nor is there any proposal in the text of the current Notice of Proposed Rulemaking which suggests that the Commission is looking to rescind for just one of two parties (namely, ITFS) PSA protection. Any such proposal would have elicited an outpouring of comment from ITFS and MMDS parties alike; but, as it is, Grand Alliance appears to be the only commenter which has sought to argue that Rule 74.903(d) does not mean what the plain language says.

But even if the Commission should see fit to consider the argument on its merits, there is no basis for the relief the Commenter seeks, i.e. a dispensation on its part to install new facilities anywhere within ITFS E/F PSAs. Grand Alliance’s effort to deprive ITFS E and F licensees of the protections they have enjoyed since 1998 is no more legitimate than if ITFS parties sought to deprive Grand Alliance of protection for its pre-September 17, 1998 sites. In other words, the Commission struck a delicate balance in 1998: E and F licensees on both sides of the ITFS/MMDS divide are grandfathered as against each other. The most Grand Alliance can expect at this point is that any sites it was serving as of that date will be protected, but sites proposed after that date must provide the requisite protection under Rule 74.903(d) to ITFS.

Grand Alliance makes two other arguments which merit a brief response. The first is a contention that ITFS stations used as relays should not be protected.

First, it should be noted that Archdiocese does not use its E Group channels as relays. It uses these channels as full-service, high-powered ITFS stations to cover areas such as Beacon, NY which cannot be covered with its A Group facilities.

Even if it did, however, the key point is that ITFS systems have evolved over 40 years such that, in some instances, the most efficient means of distributing instructional programming has been via the use of ITFS relays. The Grand Alliance argument to the contrary disregards this long-established pattern. Moreover, while the Commenter offers alternative solutions, such as MMDS licensee provision of “the necessary facilities” (Comments at 8), there is no indication that MMDS licensees are in a position to deliver on this proposal or, for that matter, that whatever they might provide would be comparable to the licensees facilities utilized by E and F ITFS licensees.

In addition, the relief Grand Alliance seeks -- that “all use of the ITFS and MMDS spectrum [should be transitioned] to low-power operations” (Comments at p. 6) -- is not confined to ITFS relays, but would extend to E and F Group operations generally, whether relay or not. Such a result would be gross disservice to the educational needs of the schoolchildren served by the Archdiocese and other ITFS licensees. Archdiocese’s schedule of instructional programming is on file with its opening comments. That Schedule is set forth in 139 pages of educational programming. The Archdiocese would not be able to deliver this programming to Manhattan, Staten Island, Yonkers, or Beacon, NY, for example, without the use of its high-powered A and E Group channels.

CONCLUSION

Accordingly, for the foregoing reasons, Archdiocese urges the Commission to reject the Grand Alliance arguments.

Respectfully submitted,

/s/ Michael Lavery

Michael Lavery

Director

Instructional Television

Archdiocese of New York